KEYSTONE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: CC Docket No. 96-45
Recommended Decision
FCC 96J-3

Dear Mr. Caton:

Enclosed for submission to the Federal Communications Commission are an original and four copies of Keystone Communications Corporation's comments in the above-captioned proceeding.

With a copy of this letter, Keystone Communications Corporation also will provide the required diskette to Sheryl Todd at the FCC.

Please contact the undersigned counsel for Keystone if there are any questions.

Sincerely,

James T. Roche

James T. Roche

JTR:mp

cc: Sheryl Todd (FCC)
ITS

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	

COMMENTS OF
<u>KEYSTONE COMMUNICATIONS CORPORATION</u>

Keystone Communications Corporation ("Keystone Communications") hereby submits its Comments regarding the Federal-State Joint Board's Recommended Decision on universal service, FCC 96J-3, released November 8, 1996 in the above-captioned proceeding ("Rec.Dec."). Keystone Communications limits its comments to the issues of the selection and description of mandatory contributors to the universal service fund, the public interest benefits, if any, of including "any other provider of interstate telecommunications" in the group of contributors, double payments, and the impact on business.

Keystone Communications Corporation, headquartered in Los Angeles, California, provides network transmission services to broadcast entities around the globe. Keystone Communications has not previously participated in this proceeding.

Keystone Communications asserts that contributors to the universal service fund should be limited to common carriers and that the public interest is, in fact, disserved by any potential expansion of the contributor pool to include private carriers in general and broadcast service providers in particular. Expansion of the pool of contributors to include such entities would severely disadvantage many private carriers. These private carriers tend to be small companies that are under-represented in Washington, D.C. and are not even aware that this proceeding could potentially affect their business interest, as illustrated by the dearth of comments from space segment resellers, teleport operators, SNG Truck operators, etc.

If forced to contribute to the fund, private carriers will face an immediate negative impact on their margins, since most of them were unaware of any potential liability. This, in turn, will result in many of these businesses going out of business, leading to less competition and higher rates. Furthermore, in many cases these private carriers are buying facilities from common carriers and any additional contribution would be a double payment. Since these private carriers gain no direct benefit from universal service, it is Keystone's position that any potential expansion of the pool of contributors to include private carriers is not justified. Thus, the Commission should limit the pool contributors to common carriers. For administrative ease the TRS procedures, definitions and service descriptions should be adopted as the means to identify contributors.

I. The Commission Should Adopt the TRS Procedures, Definitions and Service Descriptions in Identifying Which Entities Must Contribute to Universal Service Support Mechanisms.

Keystone Communications supports the Joint Board's recommendation that the Commission adopt the TRS definitions for determining who must pay into the subject support funds. (See Rec. Dec. at para. 786). However, Keystone Communications believes that the Commission also should utilize the TRS procedures, including an annual worksheet with instructions, the Communications Act of 1934 definitions and an appropriate and reasonable contribution factor to be applied to annual revenues.

This approach is consistent with the legislative distinction between interstate telecommunications services providers and other providers of interstate telecommunications. (See 47 U.S.C. §254(d)). Mandatory contributors are described as every telecommunications carrier that provides interstate telecommunications services. As the term carrier is not defined in 47 U.S.C. §254, the Commission must apply the Communications Act definition of "Common Carrier" or "Carrier." (See 47 U.S.C. §153 (10)). This would be consistent with the TRS approach to identifying mandatory contributors.

The Commission and carriers are already familiar with the TRS support mechanisms. Therefore, application of the TRS procedures will make the universal service fund administratively easier to implement. Whereas, the creation of a separate list of specific types of entities that must contribute to universal service support mechanisms would unnecessarily complicate the process and lead to the potential inclusion of companies that, to date, have had no plans to participate in the fund, are unaware of the fund, and have not incorporated payment into their business plans.

In summary, both the TRS and universal service support mechanisms require the identification of potential contributors. The Commission has developed a method of identification for TRS that is easy to explain, easy to apply, and well understood by carriers. The Commission should use the TRS approach for determining mandatory contributors to the universal service support mechanisms.

Keystone Communications also agrees that information service providers and enhanced service providers should not be required to contribute to universal service support mechanisms. (See Rec. Dec. at para. 790). Such services are substantially similar and are not telecommunications services, and the providers of such services are not telecommunications carriers (See Rec. Dec. at footnote 2535). If such service providers also provide basic telecommunications services, only revenues derived from the provision of the basic services should be subject to the universal service support mechanisms.

II. The Joint Board in its Recommended Decision Failed to Show Any Public Interest Requirements for Contribution by Any Other Provider of Interstate Telecommunications.

The United States Congress clearly stated that any other provider of interstate telecommunications [non-common carrier] may be required to contribute to the preservation and advancement of universal service if the public interest so requires. (See 47 U.S.C. §254 (d)). Such contributions require compelling public interest rationale. Clearly, the public interest does not require increasing the pool of contributors to ensure that there would not be a funding short-fall. If the problem is a funding short-fall, then the Commission needs to examine means to limit the funds required to meet universal service obligations, or it needs to raise the rate of contribution from carriers who have direct benefit from the PSTN and/or universal service.

Requiring providers of interstate telecommunications to contribute to the universal service support mechanisms could in fact disserve the public interest by raising rates and driving private carriers out of business, leading to less competition and further rate increases. The public interest is not served by requiring contributions from entities: 1) that do not substantially benefit from the PSTN or do not access the public switched network for the provision of their services; 2) derive little or no direct benefit from universal service; or 3) do not offer telecommunications services for a fee directly to the public [for hire to the public]. Surely, the public interest does not require contribution from these entities. Only to the extent that these other providers offer interstate telecommunications services on a common-carrier basis should they be required to contribute to the universal service support mechanisms.

Requiring contributions from specialized non-common carriers would severely disrupt their service markets by increasing their cost basis for their services and by affecting the number of suppliers in that market. Specialized non-common carriers tend to be relatively small companies that are extremely sensitive to changing market conditions. Large contribution requirements on these small companies would result in the closing of businesses due to lost profit margins or lost customers. This in turn could lead to a decrease in the number of suppliers, resulting in less competition and continued upward pressure on rates. None of this serves the public interest, especially where the underlying service providers derive no benefit from universal service.

III. Private Carriers That Provide Services via Leased Facilities Should Not Be Required to Contribute to the Universal Service Fund as They Already Contribute to the Fund via Their Payments to Other Carriers.

Suppliers of broadcast transmission services already contribute to support mechanisms through their payments to other carriers. Additional contributions would hinder the growth of certain broadcast transmission services and would raise the price of such services. In addition, such activity could provide a model for taxing broadcast transmissions into and out of nations that seek to limit the free flow of information.

Contributions should only be required from facilities-based carriers because resellers of such services already make contributions to universal service through their payments to facilities-based carriers. This then alleviates the double payment problem and takes into consideration those entities that do not add any service (or value) to the PSTN.

Broadcast transmission providers should be exempt from contribution to the fund. The public interest, both domestically and internationally, dictates that broadcast transmissions be encouraged. The application of the contribution requirement to video broadcast transmission providers would lead to increased cost to distribute new programming both domestically and internationally. These increased costs will lead to less programming being exported from the U.S. via U.S.-based service providers.

Another potential concern is that those nations which seek to limit the flow of information could use the U.S. universal service fund and its application to broadcast transmission providers as a model to "tax" international broadcast transmission providers; thereby, creating a potential barrier to trade and information. Recent press reports of nations' seeking to retaliate against U.S. companies due to program content clearly indicate that the United States must not create a potential tool that could be used by other nations to thwart the free flow of information and U.S. policy objectives. For instance, a nation-state seeking to limit the reception of programming could implement a universal service fund and require contributions from international broadcast service providers (Panamsat, Keystone, Orion, etc.). Thus, in the interest of supporting U.S.

policy and the free flow of information, broadcast transmission providers should be excluded from the pool of service providers required to contribute to the universal service fund.

WHEREFORE, Keystone Communications Corporation offers these comments regarding the Recommended Decision.

Respectfully submitted,

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December 19, 1996

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